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OFFICE OF PETITIONS

In re Application of	:	
Liang et al.	:	
Application No. 09/089290	:	
Filing or 371(c) Date: 06/01/1998	:	DECISION
Attorney Docket Number: TI-26415	:	ON PETITION

This is a decision on the "Petition to Withdraw Withholding of Abandonment Under 37 CFR §1.181," filed May 23, 2007. The delay in treating this petition is regretted.

This Petition is hereby **granted**.

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed December 9, 2002, wherein no claims were allowed. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a).

Applicant filed a Notice of Appeal in response to the Office action on February 6, 2004, and a defective Appeal Brief on March 11, 2003. The Examiner filed an Answer on May 21, 2003. The case was set before the Board of patent Appeals and interferences ("Board"), which affirmed the Examiner in a Decision mailed November 24, 2003.

Applicant filed and this office received a Request for Continued Examination ("RCE") and Submission on June 25, 2007. A Notice of Abandonment was mailed July 3, 2007.

Applicant's Assertion

Applicant files the instant petition and asserts that a timely RCE and Submission were filed on January 23, 2004.

Applicable Law, Rules and MPEP

37 CFR § 1.114, Request for continued examination, states

- (a) If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:
- (3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal

Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) Prosecution in an application is closed as used in this section means that the application is under appeal, or that the last Office action is a final action (§ 1.113), a notice of allowance (§ 1.311), or an action that otherwise closes prosecution in the application.

37 CFR § 1.304, Time for appeal or civil action, provides

(a) (1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (§ 1.302) or for commencing a civil action (§ 1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences.

The MPEP 1214.06 states: "The proceedings in an application or ex parte reexamination proceeding are terminated as of the date of the expiration of the time for filing court action."

Analysis and conclusion

In this instance, after the Board Decision, mailed November 24, 2003, Applicant was given two months before proceedings in the application terminated. Applicant has demonstrated by a preponderance of evidence that Applicant timely filed a RCE and Submission on January 23, 2004. Accord 37 CFR § 1.304(b).

In view of the foregoing, the petition is granted. The holding of abandonment is hereby withdrawn.

No fee has been charged and none is due.

The application will be referred to Technology Center Art Unit 2613 for processing of the RCE and Amendment, and for further examination in the normal course of business.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



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Office of Petitions